

J. Maguire



Comptroller General
of the United States

Washington, D.C. 20548

145949

Decision

Matter of: Six-month Death Gratuity

File: B-227582.3

Date: February 21, 1992

DIGEST

Where through administrative mistake of fact or law a death gratuity payment is made to a person clearly not entitled to it and it is equally clear that another person is entitled thereto, the administrative office should make payment to the proper payee, whether or not the erroneous payment is recovered. Thus when death gratuity payment was made to the spouse of a member who later was implicated in the member's death, second payment may be made to her parent.

DECISION

This action is in response to a request for reconsideration of our decision Matter of Death Gratuity, 68 Comp. Gen. 340 (1989). A claim for death gratuity was made by a member's parents who alleged that their daughter was killed by her husband. They presented a number of arguments regarding their assertion. Although there was some indication that the husband may have been involved in the death of the member, the investigating officials were unable to conclude that he killed her and no charges were filed against him. Since there was no official statement of his involvement, our Claims Group authorized payment of the death gratuity to the husband pursuant to 10 U.S.C. § 1475 and 1477.

We upheld the claims decision stating that in the absence of evidence that the husband of the deceased service member acted with felonious intent in connection with the member's death, he was entitled to receive the death gratuity payment.

The request for reconsideration is based on new information presented by a recent Naval investigation conducted following the death of the husband. For the reasons set forth below, it is our view that a payment of the death gratuity should be made to the mother of the member.

The United States Naval Investigative Service report concerning the death of the husband reflects that he apparently committed suicide on November 25, 1990 in Bremerton, Washington. He left a note which implicates him in the death of his former wife.

In rendering decisions on claims for death gratuities involving service members killed by their spouses, it has long been our policy not to authorize payment to a person otherwise entitled to be paid if that person participated in or caused the death of the individual upon whose death the payment became due. See 55 Comp. Gen. 1033 (1976).

When we initially considered this case we were limited by the facts presented to us by the investigating officials. Now that new evidence has been presented, it is evident that the husband was not entitled to this payment and that the survivors other than husband listed in 10 U.S.C. § 1477, are entitled to the payment. 37 Comp. Gen. 131 (1957).

Since it appears that there are no children of the marriage and the deceased member had designated her mother to receive the death gratuity on a form executed prior to her marriage, payment should be issued to the mother. In addition, we recommend that the Navy consider the feasibility of recovering the payment previously made.


James F. Hinchman
General Counsel